International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3064/2017*, **

Communication submitted by:	Hakob Karapetyan (represented by counsels, Ara Ghazaryan and Hasmik Harutyunyan)
Alleged victim:	The author
State party:	Armenia
Date of communication:	28 December 2016 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 6 December 2017 (not issued in document form)
Date of adoption of Views:	2 November 2018
Subject matter:	Media coverage of peaceful rally
Procedural issue:	Failure to exhaust domestic remedies
Substantive issues:	Freedom of expression; right to an effective remedy
Articles of the Covenant:	2 (3) and 19 (2)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Hakob Karapetyan, a national of Armenia born in 1983. He claims to be a victim of a violation by the State party of his rights under articles 2 (3) and 19 (2) of the Covenant. The Optional Protocol entered into force for Armenia on 23 June 1993. The author is represented by counsel.

The facts as submitted by the author

2.1 The author is a journalist with a local media company, Ilur.am.[1] In the summer of 2015, a number of peaceful demonstrations took place in Armenia against the Government's decision to raise the electricity rates.

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas R. Zimmermann.

[1] A local Internet-based news agency.

2.2 On 18 June 2015, a peaceful sit-in action commenced in Liberty Square in Yerevan organized by the "No Robbery" civic initiative. In the evening of 22 June, a spontaneous large-scale rally began to march peacefully from Liberty Square along Baghramyan Avenue in the direction of the presidential palace, where the protesters wanted to hand over a petition. However, the police blocked Baghramyan Avenue, preventing the protesters from reaching the presidential palace. The protesters then decided to carry out a sit-in action in Baghramyan Avenue which continued throughout the night, bringing together about 500 protesters.

2.3 The author submits that, as a journalist, he was wearing his press badge and covering the events by taking photographs. He submits that both the rally and the sit-in action were peaceful, and that there was no call for violence. A large number of police started to gather in Baghramyan Avenue, equipped with armoured vehicles, water cannons and barbed wire. Many people not wearing uniforms were among the police.

2.4 On 23 June 2015, at around 5 a.m., the police began to disperse the protesters violently, using excessive force and water cannons. The author submits that about 240 protesters were arrested that morning. The author took numerous photographs capturing police violence, including one of a high-ranking police officer kicking a journalist and destroying his camera.

2.5 The author claims that he tried to leave the scene but was stopped by the police. He was taken to Liberty Square. While walking, he discretely removed the memory card of his camera and hid it in his pocket. Upon arrival at Liberty Square, he was met by a senior police officer, who, interested in the content of the photos, asked the author to hand over the memory card. Following the author's refusal, the officer took his camera and destroyed it. The author claims that the police searched him, took away his memory card and never returned it. The author was subsequently released.

2.6 The author reports that on 22 and 23 June 2015, the police physically ill-treated 13 journalists and hindered the professional work of 11 others. Technical equipment and memory cards of about 10 journalists were intentionally damaged and/or stolen. In this context, the author refers to numerous reports by international organizations, non-governmental organizations and others.[2]

2.7 On 26 June 2015, the author reported to the Special Investigation Service[3] that the police had taken his memory card and failed to return it.

2.8 On 2 July 2015, the Special Investigation Service initiated a criminal investigation into the allegations that police officers had exceeded their powers during the special operation aimed at dispersing the rally and the sit-in action on Baghramyan Avenue on 23 June 2015 and following days. The author notes that the criminal case focused on investigating the violence committed by the police against the protesters and journalists at the venue and in the police stations. He also notes that when investigating this case, the Service would also have to examine the illegal actions committed by the police who prevented journalists from discharging their professional duties, paying specific attention to the reports of destruction of media equipment, cameras, memory cards and recording devices.

2.9 On 31 July 2015, the author was assigned victim status in the criminal case.[4]

[2] The author refers to reports and statements by the Office of the United Nations High Commissioner for Human Rights, the Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, the Office of the Commissioner for Human Rights of the Council of Europe, Human Rights Watch, Amnesty International, Freedom House, Reporters Without Borders and the Embassy of the United States of America in Yerevan.

[3] The Special Investigation Service is an independent State body empowered to investigate the complicity of officials of the legislative, executive and judicial branches of Government in criminal cases.

[4] The author provided a copy of the letter of the Deputy Head of the Division on Investigation of Torture and Crime of the Special Investigation Service in which the author is recognized as a victim in a criminal case.

2.10 On 15 April 2017, the author was asked to testify before the Special Investigation Service as a witness in the criminal case of police ill-treatment of another journalist. The author was cross-examined with another journalist regarding the unlawful actions of the police. The cross-examination was not related to the facts of physical assault and obstruction committed by police officers in relation to the activities of the author as a journalist, but aimed at checking the accuracy of his statements regarding another victim. Since the cross-examination, the author has received no information from the Service concerning any other procedural or investigative actions carried out in the case. The author notes that no administrative remedies are foreseen by the domestic law in the framework of criminal proceedings.

2.11 The author notes that in response to queries on the status of the investigation by the Committee to Protect Freedom of Expression,[5] the Service stated on 5 April 2017 that 22 media representatives had been recognized as victims in the investigation and that, with respect to 4 of them, the criminal investigation had been concluded and forwarded to the court. The Service stated that the investigation with regard to the author was still ongoing.

2.12 The author challenges the provisions of the Criminal Procedure Code and claims that they do not provide for challenging inaction by the investigative bodies. Article 290, paragraph 1, defines only "actions" and "decisions" that can be referred to a supervising prosecutor, i.e. the "failure" to conduct an investigation is not expressly stipulated among the grounds on the basis of which it can be challenged.

2.13 He notes that although the Constitutional Court of Armenia, by its decision 844, has interpreted the scope of section 1 of article 290 of the Criminal Procedure Code in relation to the right to challenge inaction on the part of the investigating authorities, it failed to specify the meaning of the term "inaction".

2.14 Furthermore, the author submits that the pretrial investigation was not public, with defendants and victims having very limited due process rights. He notes that the Criminal Procedure Code is vague regarding the time limits of investigations: while article 197 of the Code limits the pretrial period to two months, with possible extension, it does not specify how many times an investigation can be extended. According to the author, the current pretrial investigation has been extended at least 10 times. The author claims, in this regard, that he has never been informed as to the grounds for any extension.

The complaint

3.1 The author claims that by destroying his camera and confiscating his memory card, as well as by preventing him from exercising his professional journalistic duties, the State party has violated his right to freedom of expression as protected by article 19 (2) of the Covenant.

3.2 The author notes that it is essential that the media and press are able to report on public issues without censorship and restraint and to inform the public.[6] He stresses that the State party should put in place effective measures to protect against attacks on those exercising their freedom of expression. The author maintains that while journalists are more likely to be subjected to threats, including intimidation and attacks, because of their activities, these attacks should be vigorously investigated in a timely fashion and the perpetrators prosecuted, with victims receiving appropriate forms of redress.[7]

3.3 The author claims that the failure of the State party to investigate allegations of such violations could give rise to a separate breach of the Covenant.[8] In this context, his allegations concerning the actions of the police were not subject to effective investigation. He notes that, although he was formally accorded victim status in the ongoing criminal

[5] Established in 1996, the Committee to Protect Freedom of Expression is an independent non-governmental organization. It monitors freedom of speech in Armenia and the development of independent media, tracing and responding to violations of journalists' rights.

[6] Reference is made to general comment No. 34 (2011) on the freedom of opinion and expression.

[7] Ibid., para. 23.

[8] Reference is made to general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

investigation, the investigation has been delayed[9] and no perpetrators have been identified or prosecuted.

3.4 The author submits that, as the State party has failed to ensure the author's right to an effective domestic remedy, there has been a violation of article 19 (2), read alone and in conjunction with article 2 (3).

State party's observations on admissibility

4.1 By note verbale of 7 February 2018, the State party challenged the admissibility of the communication for non-exhaustion of domestic remedies.

4.2 The State party observes that following the 23 June 2015 dispersal of demonstrators by the police, the Special Investigation Service instituted criminal proceedings under articles 309 (2),[10] 164 (1)[11] and 185 (1)[12] of the Criminal Code of Armenia. In these criminal proceedings, 59 persons, including 22 journalists, were recognized as victims. Following a comprehensive investigation, four police officials were charged with violating the law. The investigation established all the episodes of their illegal actions and the case was sent to the Kentron and the Nork Marash district courts for examination. The investigation is ongoing.

4.3 Based on the statements of the journalists, including the author, a large number of police officials were interrogated and forensic medical and trace examinations and examinations of relevant objects were carried out. Following the examination of video materials disseminated on the Internet, the Special Investigation Service interrogated additional police officers and conducted other intelligence and investigative measures with the aim of establishing the exact circumstances of the events.

4.4 The State party submits that on 31 July 2015, the author was recognized as a victim in the proceedings, he was informed of his procedural rights and was interrogated. During the proceedings, the author was presented with all the results of the forensic examinations and with subsequent experts' conclusions. The State party underlines that the author brought no motions in this regard.

4.5 In order to verify the veracity of the author's statements, a number of police officers, including high-ranking ones, as well as journalists were interrogated. Given the important contradictions between the statements of the author and those of another journalist, a cross-examination was carried out on 15 April 2017, as a result of which the author withdrew his previous statements.

4.6 The State party further notes that despite the fact that the author was informed of his right to file motions, he never applied to the investigative body with any motions regarding the investigation or actions of the police officers. Regarding the author's claim that the decision of the Constitutional Court with regard to the scope of article 290 of the Criminal Procedure Code is an impediment to challenging inactivity by an investigative body, the State party indicates that there are many examples of article 290 also covering the right of victims to challenge inactivity of investigators.

4.7 As to the availability of administrative remedies, the State party notes that these are foreseen by article 69 of the Code of Administrative Procedure. However, since the criminal proceedings remain ongoing, the author cannot yet lodge a claim and seek administrative redress.

4.8 The State party also notes that taking into account the confidentiality of the investigation, as well as the fact that the current submission focuses mainly on admissibility, more comprehensive and detailed information about the investigation can be provided at a later stage if the Committee should decide that the case is admissible.

[9] At the time of the submission, the investigation had been ongoing for one year and five months.

[10] Exceeding official authority committed with violence, weapons or special measures.

[11] Hindering the lawful professional activities of a journalist.

[12] Intentional destruction or damage of property.

4.9 The State party concludes that the author's failure to challenge the alleged inactivity of the investigative body through domestic proceedings deprived the State party's competent authorities of the ability to address the alleged violations within the framework of the domestic legal system. As the investigation is still ongoing, the author has an effective remedy against the alleged inactivity of the investigative body through a clear-cut mechanism envisaged by the Criminal Procedure Code.

Author's comments on the State party's observations on admissibility

5.1 By letter of 4 May 2018, the author challenged the process of the ongoing criminal procedure, stating that the State party had failed to specify the investigative and operational measures that had been conducted and the names of the police officers and journalists who had been interrogated. The State party also failed to comment on the inconsistent actions taken by the investigators, including regarding the accuracy of the cross-examination of victims and witnesses. He also claims that the investigation is unreasonably prolonged.

5.2 The author denies that he has failed to exhaust domestic remedies, noting that, in any event, it is a right and not an obligation to challenge the acts and omissions of an investigative body. The author concludes that it is a State party's obligation to conduct a fair, thorough and prompt investigation, and that the effectiveness of the domestic remedies is not dependent upon the victims taking the initiative to file motions.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With regard to the requirement laid down in article 5 (2) (b) of the Optional Protocol, the Committee first notes that the State party has challenged the communication for non-exhaustion of domestic remedies, as the author did not address any claim to the Armenian authorities regarding the course of the investigation of his case before submitting the communication to the Committee. Thus, according to the State party, its competent authorities have been prevented from properly addressing the alleged violations within the framework of the domestic legal system. The Committee also takes note of the author's arguments that the investigation conducted by the Special Investigation Service has been unreasonably prolonged; that, as a victim, he has not been kept sufficiently informed on the status of the investigation; and that, in any event, complaining about the course of an investigation is a victim's right but not an obligation and that the effectiveness of domestic remedies cannot be dependent upon the initiative of the victims to file appeal motions. The Committee further takes note of the fact that the author has been assigned victim status and that four police officers have been charged.

6.4 The Committee recalls that, pursuant to article 5 (2) (b) of the Optional Protocol, it is precluded from considering any communication unless it has been ascertained that all available domestic remedies have been exhausted; this rule does not apply, however, if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief to the presumed victim.[13] In the present case, the delay of the investigation does not seem to be such as to discharge the author from the requirement to exhaust the available domestic remedies prior to submitting the case to the Committee. In addition, nothing on file indicates that the remedy in question could not eventually bring effective relief to the author. The Committee therefore concludes that, in the circumstances of the present case, the requirements of article 5 (2) (b) of the Optional Protocol have not been met.

[13] See, e.g., *Amirov v. Russian Federation* (CCPR/C/95/D/1447/2006), para. 10.3.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.